IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs August 7, 2007

EARL VANTREASE, JR. v. WAYNE BRANDON, Warden

Appeal from the Circuit Court for Hickman County
No. 06-5053C Jeffrey S. Bivins, Judge

No. M2006-02414-CCA-R3-HC - Filed October 9, 2007

The Petitioner, Earl Vantrease, Jr., appeals the summary dismissal of his petition for habeas corpus relief. The Petitioner contends that his aggravated robbery conviction is void because he has previously been granted post-conviction relief. The habeas corpus court dismissed the petition, finding that the Petitioner failed to state a cognizable claim for relief. We affirm summary dismissal of the petition but do so on a different ground—the Petitioner failed to include pertinent documents in support of his factual assertions. The order dismissing the petition is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

Earl Vantrease, Jr.,Only, Tennessee, pro se.

Robert E. Cooper, Jr., Attorney General and Reporter and Benjamin A. Ball and Daniel Lins, Assistant Attorneys General, for the appellee, State of Tennessee.

OPINION

Factual Background

On April 24, 2003, a Putnam County jury convicted the Petitioner of aggravated robbery, a Class B felony. See Tenn. Code Ann. § 39-13-402. On July 31, 2006, the Petitioner filed an application for the writ of habeas corpus in the Hickman County Circuit Court, arguing that his imprisonment is "the result of a void judgment of conviction" because he has "prevailed on a [p]ost-conviction [p]etition resulting in the reversal of the conviction." Specifically, the Petitioner states as follows:

> On July 25, 2003[,] the [s]entencing [h]earing was held. The trial/sentencing court deliberately refused to impose a sentencing [sic] on the grounds that he [sic]

found the trial counsel [sic] had been ineffective by failing to call favorable witness [sic] to come testify at trial. . . . The trial court deemed trial counsel ineffective and terminated trial counsel's representation of the Petitioner.

In the month of April 2004, during a [m]otion [f]or [n]ew [t]rial hearing, the Petitioner, pro se, filed a [p]ost-[c]onviction petition in "open court" in the Putnam County Criminal Court before the trial court judge.

The trial court allowed the Petitioner to verbally enter the issues of the petition upon the record while testifying under oath.

After hearing several of the issues the trial court stated he [sic] finds grounds to grant the petition.

On June 21, 2004, the Petitioner received an [a]dministrative [d]ischarged [sic] from the custody of the Tennessee Department of Correction, by the Tennessee Department of Correction in compliance to a COURT ORDER. . . .

The Petitioner was returned to his freedom.

. . . .

On December 30, 2005, the Petitioner was arrested on a traffic violation by the Mt. Juliet police. . . .

. . . .

According to the current record[,] the Petitioner has been remanded to the custody of the Department of Correction for the same and exact offense, charge, and conviction in which the original trial court had previously reversed and dismissed . . . .

The court in this habeas corpus proceeding summarily dismissed the petition and did not grant the Petitioner's request for counsel, and the Petitioner is proceeding pro se on appeal. The record on appeal before this Court contains the petition, the State's motion to dismiss the petition, the Petitioner's response to the motion to dismiss, the order of dismissal, and the Petitioner's motion to alter or amend the judgment.

The Petitioner attached to his habeas corpus petition a copy of the judgment of conviction, which reflects that the Petitioner received a sixteen-year sentence to be served at 35% as a Range II, multiple offender. The sixteen-year sentence was to be served consecutively "to the Wilson County case numbers 980085 and 980086." The judgment shows a "Sentence-imposed date"of July 25,

2003. The judgment is signed by the trial judge and provides that the "Date of Entry of Judgment" was December 16, 2005.

The Petitioner also provided several other documents as attachments to his petition. First, he attached an affidavit of trial counsel, which states that, at the July 25, 2003 hearing, the trial judge "deliberately refused to impose a sentence because he discovered [trial counsel] never subpoenaed [the Petitioner's] defense witnesses to trial." Trial counsel continues that he was thereafter determined to be ineffective and removed from further representation of the Petitioner. Finally, trial counsel states, "I don't remember if you were granted a new trial but I am certain you were never sentenced based on the above grounds."

The next attachment is an apparent record from the Department of Correction (DOC) showing the "arrival/departure" of the Petitioner from custody. The document reflects that, pursuant to a court order, the Petitioner was administratively discharged from custody on June 21, 2004. The document further shows a court-ordered administrative correction on December 30, 2005, returning the Petitioner to the custody of the DOC.

Finally, the Petitioner provided arrest records in support of his petition. The arrest report reflects that the Petitioner was stopped on December 30, 2005, for a traffic violation. The officer determined that there was "an active warrant" on the Petitioner "out of Putnam County." The Petitioner was taken into custody.

The State's motion for summary dismissal was filed on August 18, 2006. The State sought dismissal of the petition on the basis that the Petitioner had not stated a cognizable claim for relief and, additionally, noted in its memorandum in support of the motion that the Petitioner had failed to support his claim with sufficient documentation. The State attached two documents to the motion—an order overruling the Petitioner's motion for a new trial signed by the trial judge on April 6, 2004, filed on April 12, 2004, and a document signed by the Petitioner reflecting that he waived any direct appeal of his conviction, filed on May 4, 2004.

The habeas corpus court granted the State's motion to dismiss and entered an order of dismissal on August 23, 2006. The Petitioner's response to the motion to dismiss was not considered by the habeas corpus court in its decision to dismiss summarily since it was received after the order was filed.

The Petitioner attached further documentation to his response. Again, apparent DOC documents which reflect that the Petitioner was transferred to court on April 2, 2004, and that he received a court-ordered administrative discharge on June 21, 2004.

The Petitioner also supplied an affidavit of "the primary officer that responded to the robbery" at issue. In the affidavit, the officer admits to pulling the Petitioner over on I-40, beating the Petitioner, and taking $30,000 from him. According to the affidavit, the officers offered to release the Petitioner from custody in exchange for the Petitioner selling drugs for the officers, but

the Petitioner refused and was taken to jail for aggravated robbery. The officer admits to giving false testimony against the Petitioner at trial and states that "[a]lmost every official in Putnam County is involved in the illegal drug business . . . ." Finally, the officer states that the Petitioner "was released after winning his case on post-conviction. However the D.A. has re-arrested him & imposed a 16 year sentence against him without a new trial or indictment . . . ."

The Petitioner filed a motion to alter or amend the judgment on September 25, 2006. No action was taken on this motion. A notice of appeal was likewise filed on September 25, 2006.

This appeal followed. In his brief on appeal, the Petitioner has again attached further documentation in support of his claim.[1] Notably, he has attached an affidavit purportedly from the assistant district attorney general involved in prosecuting the Petitioner for aggravated robbery. The assistant district attorney acknowledges in the affidavit that the Petitioner was granted post-conviction relief in 2004 and that the Petitioner was "falsely arrested" in 2005. He further states that the judgment form was forged in retaliation for the Petitioner's lawsuit against Putnam County.

The Petitioner has also attached a memorandum allegedly signed by the prison warden. In the memorandum, the warden states in pertinent part as follows:

> The [d]istrict [a]ttorneys had full authority to incarcerate you for suing the state. . . Either you accept the punishment that has been given you or you will [sic] subjected to physical harm or possible death should you challenge [Putnam County officials] in any legal action. You are not entitled to immediate release although you are imprisoned without basis.

The Petitioner has also provided additional documents from the DOC. The documents represent DOC "contact notes." The comments contained in the January 11, 2006 contact note indicate in pertinent part as follows:

> Our office received case #02-0666 Ct 1—16yrs 35% agg robb to serve consecutive to Wilson Co. case #980085 and 980086 sentenced on 7-25-03 but was not sent to DOC for entry, the order was misplaced by the DA's office. DA's office was notified by the court clerk's office that this offender did not have a J/O. The DA's office sent the order with a date of entry of 12-16-05, which is the date the judge signed this order.
>
> I contacted the DA's office in regards to the conflicting dates and spoke with David Patterson who handled this case and he stated that it was not originally done when he was sentenced back in '03. And the judge knew also. He stated that we

[1] We point out that the authenticity of the various attachments has not been established. We mention the attachments only because the Petitioner attempts to rely upon them on appeal.

needed to start the sentence on 7-25-03 and make it consecutive to the Wilson Co. cases.

Talked this over with the Mgr. of SCS and she stated that is the way we will place it on TOMIS and modify LIMD (he was showing esp on the Wilson Co. cases 6-21-04) to show him released in error and take time from 6-21-04 till he is back in custody.

ANALYSIS

Initially, we note that the Petitioner raises several procedural deficiencies in these proceedings. First, the Petitioner argues that the habeas corpus court denied him the opportunity to respond to the State's motion to dismiss the petition. However, "when a petition for a writ of habeas corpus fails to state a cognizable claim, the lower court may summarily dismiss the petition" without permitting the Petitioner time to respond to the State's motion to dismiss. See Barry Sotherland v. State, No. M2006-01891-CCA-R3-PC, 2007 WL 1237786, at *4 (Tenn. Crim. App., Nashville, Apr. 27, 2007), perm. to appeal denied, (Tenn. Aug. 13, 2007) (citing Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994)).

In his second argument, he asserts that the State was required to respond to his petition for a writ of habeas corpus and that a motion to dismiss does not satisfy this requirement. He cites to Richard Lynn Norton v. Don Everhart, Warden, 1993 WL 430644, at *4 n.10 (Tenn. Crim. App., Knoxville, Oct. 26, 1993), perm. to appeal granted, (Tenn. Mar. 28, 1994) (citing Tenn. Code Ann. § 29-21-116(b) (1980 Repl.); State v. Carroll, 713 S.W.2d 92 (Tenn. Crim. App. 1986)), in support of this argument. However, in this case, unlike the situations in Norton and Carroll, the State filed a motion to dismiss and provided specific grounds for dismissal in the accompanying memorandum. Consequently, those cases are not applicable.

Third, he points out that, pursuant to Tennessee Rule of Civil of Procedure 59.04, he filed a motion for alteration or amendment of the judgment of the habeas corpus court dismissing his petition summarily and that the court did not rule on this motion. While the habeas corpus court "should have explored the veracity and merits of the facts and allegations in the motion to alter or amend the judgment, . . . [r]emanding this case would be an exercise in futility, and the interests of judicial economy and efficiency are better served by disposing of this case at this time." Danny Ray Meeks v. State, No. M2005-00624-CCA-R3-HC, 2005 WL 3262934 (Tenn. Crim. App., Nashville, Dec. 1, 2005), perm. to appeal denied, (Tenn. May 30, 2006).

The crux of the Petitioner's argument is that the judgment of conviction for aggravated robbery is void because he has previously been granted post-conviction relief from that conviction and the conviction has been vacated. The determination of whether to grant habeas corpus relief is a question of law and our review is de novo. See State v. Summers, 212 S.W.3d 251, 262 (Tenn. 2007). The writ of habeas corpus is guaranteed by article I, section 15 of the Tennessee Constitution. Although the writ is constitutionally guaranteed, it has been regulated by statute for more than one hundred years. See Ussery v. Avery, 432 S.W.2d 656, 657 (Tenn. 1968). Tennessee Code

Annotated section 29-21-101 currently provides that "[a]ny person imprisoned or restrained of liberty, under any pretense whatsoever, except in cases [in which federal courts have exclusive jurisdiction], may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment and restraint."

However, although the language of the statute is broad, the grounds upon which habeas corpus relief will be granted are narrow. See Hickman v. State, 153 S.W.3d 16, 20 (Tenn. 2004). A petitioner must demonstrate by a preponderance of the evidence that the judgment entered against him or her is "void," not merely "voidable." Hogan v. Mills, 168 S.W.3d 753, 755 (Tenn. 2005). A judgment is void "only when 'it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered' that a convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant's sentence of imprisonment or other restraint has expired." Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993) (quoting State v. Galloway, 45 Tenn. (5 Cold.) 326, 336-37 (Tenn.1868)); see also Hoover v. State, 215 S.W.3d 776, 777 (Tenn. 2007).

The habeas corpus court in this case summarily dismissed the petition, concluding that the Petitioner "failed to state a colorable claim for habeas corpus relief." We disagree.

Following a court's decision to grant post-conviction relief, "the court shall vacate and set aside the judgment . . . and shall enter an appropriate order or any supplementary orders that may be necessary and proper." Tenn. Code Ann. § 40-30-111. A judgment that has been vacated is no longer legally binding. Thus, if the Petitioner was granted post-conviction relief as he asserts and he is being confined under a vacated judgment of conviction, the Department of Correction is without authority to further hold the Petitioner. In short, the Petitioner stated a cognizable claim for habeas corpus relief.

However, our supreme court has recently held that, "[i]n the case of an illegal sentence claim based on facts not apparent from the face of the judgment, an adequate record for summary review must include pertinent documents to support those factual assertions." Summers, 212 S.W.3d at 261. The court further noted that, "[w]hen such documents from the record of the underlying proceedings are not attached to the habeas corpus petition, a trial court may properly choose to dismiss the petition without the appointment of counsel and without a hearing." Id.

We find Summers applicable to present case: the Petitioner claims a void judgment based on facts not apparent from the face of the judgment. While the Petitioner is correct that there are some anomalies regarding the judgment of conviction, if the Petitioner was granted post-conviction relief and the judgment was vacated, then there should be an order reflecting those actions. No such order appears in the record. No petition for post-conviction relief appears in the record, although the Petitioner asserts that he filed one pro se. Moreover, the Petitioner has failed to include any transcripts from the underlying proceedings showing that he was granted post-conviction relief—particularly, a transcript of the motion for new trial hearing where, according to the Petitioner, the court granted such relief and vacated his conviction. The questionable affidavits provided by the

Petitioner are not sufficient documentation in support of his claim. He has not attached pertinent documents from the underlying proceedings. In fact, the record includes a copy of the order denying the Petitioner's motion for new trial. We conclude that summary dismissal was proper.

CONCLUSION

Because the Petitioner has failed to attach the requisite documentation in support of his claim that the judgment is void, we affirm the summary dismissal of the Petitioner's habeas corpus petition.

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DAVID H. WELLES, JUDGE